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CPI Competition Policy Institute

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February 9, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

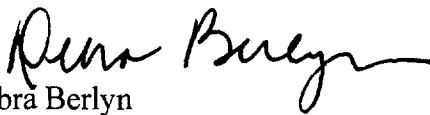
Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W. Suite 200
Washington, D.C. 20554

RE: **Ex Parte Filing**
CC Docket 97-121; CC Docket 97-137; CC Docket 97-208 and CC Docket 97-231

Dear Ms. Salas:

Enclosed please find two copies of the Competition Policy Institute (CPI) and National Association of State Utility Consumer Advocates (NASUCA) letter for inclusion in the above referenced dockets. Thank you for your attention to this matter.

Sincerely,


Debra Berlyn
Executive Director

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Chairman William E. Kennard
Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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We are writing to express concern about recent statements indicating an interest in providing guidance to the Regional Bell Operating Companies (RBOCs) in advance of their applications to enter the interLATA market under Section 271. These statements have virtually ignored the “public interest” test for approving such applications. As we discuss below, the public interest test may prove to be the Commission’s best tool to ensure that consumers realize the promise of the 1996 Telecommunications Act.

Under Section 271(d)(3), the FCC may not approve an RBOC application to provide in-region, interLATA service unless it ***finds*** that: 1) the RBOC meets the “competitive checklist” under Track A or Track B; 2) the RBOC will comply with Section 272; ***and*** 3) “the requested authorization is consistent with the public interest, convenience, and necessity.”

Recent discussions have focused almost exclusively on the first prong, the “competitive checklist”, while referring to the “public interest test” only in passing. But satisfying the checklist is not the equivalent of satisfying the public interest test. In fact, an amendment equating the public interest test with the competitive checklist was defeated on the Senate floor by a vote of 31-68. Moreover, several statements on the Senate floor indicate that support for the public interest test was due, in part, to concern that the competitive checklist might be insufficient to ensure that a local market is truly open.¹

Analyzing each RBOC application under the public interest test is absolutely critical to ensure that the application benefits consumers. While the checklist is important to competing *carriers*, the public interest test allows the Commission to evaluate the benefits of the application to *consumers*.

¹ See, Statement of Senator Stevens ("If the Senate takes out the public interest test, . . . I think that would invite abuse.")(S7961)(Jun 8, 1995); Statement of Sen. Kerrey ("I do not know if the checklist is going to work.")(141 Cong. Rec. S7970)(June 8, 1995); Statement of Senator Dorgan (" the competitive checklist . . . is not by itself sufficient to bring real competition to local markets")(Id. at S8464)(June 15, 1995)

In comments before the FCC, CPI and some state consumer advocates have endorsed an interpretation of the public interest standard that focuses on whether business and residential consumers have a "realistic choice" of an alternative carrier for local telephone service. Requiring that these consumers have a "realistic choice" before granting an RBOC application ensures that competitive pressures for local service will give both local and long distance carriers incentives to serve the interests of consumers. After all, the essential promise of the Telecommunications Act of 1996 is that consumers will have competitive choices for local and long distance service, not merely that five companies have met a set of fourteen technical requirements.

In short, the public interest test is tremendously important to consumers, is supported by several Members of Congress, and is statutorily required. The public interest standard should not be minimized during the effort to provide guidance to the RBOCs concerning the FCC's requirements for future 271 applications.

Our concern is heightened by the Commission's recent release of a Public Notice (DA 98-139) announcing meetings "to provide applicants and others with informal preliminary guidance regarding issues arising under section 271 of the Act." The Notice invites discussions concerning every item on the checklist and the requirements of section 272. **The Notice, however, does not contain a single mention of the public interest test.**

We do not object to providing guidance to the RBOCs on the meaning of Section 271's requirements before an application is filed. In fact, we look forward to the day when the requirements of Section 271 are satisfied in their entirety, allowing consumers to choose long distance service from their local Bell company *and* to choose an alternative carrier for local service. Before approving an RBOC application, however, the Commission must adhere to the statutory language that requires the FCC to determine whether or not that application is consistent with the public interest.

Consumer advocates have a unique perspective on these issues and are eager to play a significant role in upcoming 271 application proceedings. The public interest test is particularly important to ensuring that the Commission examines these applications from a consumer perspective. We urge the Commission to affirm the importance of the public interest standard in its future statements concerning the section 271 application process and to ensure that consumer advocates have an opportunity to play an active role in any future discussions.

Sincerely,

THE COMPETITION POLICY INSTITUTE

Ronald J. Binz, President
Debra Berlyn, Executive Director
John Windhausen, Jr. General Counsel

**THE NATIONAL ASSOCIATION OF STATE UTILITY
CONSUMER ADVOCATES**

Irwin A. Popowsky, President
Martha S. Hogerty, Chair, Telecommunications
Committee
Charles A. Acquard, Executive Director